IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.7459 OF 2006

Coca Cola India Private Ltd., a Company incorporated under the Companies Act, 1956 and having its registered Office at Plot No.1109-1110, Pirangut Taluka Mulshi, Pune 412 108 .. Petitioner.

V/s.

1. The Income Tax Appellate Tribunal (Pune Branch), represented by the Assistant Registrar having its office at 94, M.G. Road, Pune - 411 001.

2. The Joint Commissioner of Income-tax, having his Office at Range 1, Pune 'A' Wing, 2nd Floor, PMT Building, Shankar Sheth Road, Swargate, Pune - 411 037.

3. The Additional Commissioner of Income-tax having his office at Range 1, Pune, PMT Building, Shankar Sheth Road, Swargate, Pune 411 037

4. The Commissioner of Income-tax - 1, having his office at PMT Building, Shankar Sheth Road, Swargate, Pune 411 037.

5. The Union of India, having its office at Aaykar Bhavan, Marine Lines, Mumbai - 400 020. .. Respondents.

Mr.S.E. Dastur, senior counsel with Mr.R. Murlidhar, Mr.Arun Siwach and Mr.Ameya Gokhale i/by Amarchand Mangaldas & S.A. Shroff & Co. for the petitioner.

Mr.A.M. Kotangale for the respondents.

CORAM : DR.S. RADHAKRISHNAN &
J.P. DEVADHAR, JJ.

RESERVED ON : 23RD JANUARY, 2007.

PRONOUNCED ON : 12TH FEBRUARY, 2007.

JUDGMENT : (Per J.P. Devadhar, J.)

1. Rule. Rule made returnable forthwith. By consent of the parties, the writ petition is taken up for final hearing.

2. Two orders passed by the Income Tax Appellate Tribunal ('Tribunal' for short) are challenged in this petition. Firstly, the petitioner challenges the order of the Tribunal dated 5th October, 2005 in so far it pertains to remanding the issues relating to the disallowance of service charges and marketing expenses to the assessing officer ('AO' for short) without considering the specific grounds raised in the appeal. Secondly, the petitioner challenges the order of the Tribunal dated 7th July, 2006 in rejecting the Miscellaneous Application filed by the petitioner by stating that the decision to restore the matter to the AO for denovo consideration was a conscious decision. The assessment year involved herein is AY 1997-98.

3. The petitioner is a 100% subsidiary of Coca Cola South Asia India Holding, Hongkong, which in turn is a subsidiary of Coca Cola Asia Holding Singapore and the ultimate holding company of the petitioner is 'The Coca Cola Company U.S.A. ('TCCC' for short). TCCC is the registered owner in India of the trade marks such as Coca Cola, Coke, Fanta and Sprite. The petitioner had entered into an agreement with TCCC on 1st June, 1993 pursuant to which an ordinary gratuitous non exclusive license was granted to the petitioner and, accordingly the petitioner has been manufacturing and selling non alcoholic beverage basis also known as 'concentrates' and beverages made out of such concentrates.

4. The business activity of the petitioner comprises of blending, bottling and distribution of non alcoholic beverages. Instead of setting up its own factory, the petitioner has entered into arrangement with bottlers, fillers, wooden crate manufacturers etc. so that the 'concentrate' sold by the petitioner are used in the manufacture of non alcoholic beverages under their strict supervision and marketed throughout the country. The petitioner had also entered into a service agreement with Coca Cola India Inc. U.S.A. ('CCI Inc.' for short)

which has its branch office at Delhi. 'CCI Inc' is a subsidiary of Coca Cola Holdings India Inc (USA) which in turn is the subsidiary of TCCC. As per the service agreement, the petitioner was liable to pay for the services rendered by CCI Inc. Apart from incurring service charges, the petitioner incurred huge marketing expenses to boost sales of the non alcoholic beverages which ultimately boosts the sale of 'concentrates'.

5. In its return of income for the assessment year 1997-98, the assessee had claimed deduction of service charges amounting to Rs.46,35,12,031/- and marketing expenses amounting to Rs.73,79,03,469/-.

6. By an assessment order dated 31st March, 2000 passed under Section 143(3) of the Income Tax Act, 1961, the assessing officer inter alia disallowed service charges amounting to Rs.10,80,04,482/- on the ground that the said expenses related to earlier years. Out of the sum of Rs.10,80,04,482/- a sum of Rs.3,37,06,017/- under invoice No.0004 dated 9th December, 1996 related to the period from 1st January, 1996 to 31st March, 1996 and the balance amount of Rs.7,42,98,465/- being 1/4th of the invoice No.0006 dated 7th

January, 2007 related to the period from 1st January, 1996 to 31st December, 1996. Thus, out of the service charges amounting to Rs.46,35,12,031/- claimed as business expenditure, the AO allowed Rs.35,55,07,549/- as business expenditure and the balance amount of Rs.10,80,04,482/- was disallowed as being prior period expenditure, as more particularly set out hereinbelow :-

Invoice No.0004 dated 9.12.2006 for the period from 1.1.1996 to 31.03.1996	:Rs.3,37,06,017
Invoice No.0006 dated 7.01.1997 for the period from 1.1.1996 to 31.12.1996 (1/4th of the invoice amount of Rs.29,71,93,862)	:Rs.7,42,98,465
	10,80,04,482

7. As regards the deduction of marketing expenses of Rs.73,79,03,469/- claimed as deduction, the AO by his order dated 31st March, 2000, disallowed a sum of Rs.17,99,74,343/- inter alia on the ground that there were differences in the amounts allegedly claimed to have been paid by the petitioner to various parties and the amount confirmed to have been received by those parties. The above disallowance included claims which were not confirmed by some of the parties by sending their reply to the AO. The above disallowance included disallowance of expenses incurred in the

earlier years and ad-hoc disallowance of Rs.2,00,00,000/-. Thus, out of the sum of Rs.73,79,03,469/- claimed as marketing expenses, the AO allowed Rs.55,79,29,126/- and disallowed Rs.17,99,74,343/-, the particulars of which are as follows :-

(i)	Difference (11 parties)	2,12,04,099	
(ii)	No reply (14 parties)	3,90,28,917	
(iii)	Earlier years (7 parties)	9,97,41,327	
			15,99,74,343
(iv)	Ad hoc		2,00,00,000
			17,99,74,343

8. The petitioner filed an appeal before the Commissioner of Income Tax (Appeals) ('CIT (A)' for short) inter alia challenging the disallowance of service charges and marketing expenses made by the AO. After making detailed enquiries the CIT (A) by his order dated 14th August, 2003 held that the following factors were relevant for determining the allowability of service charges incurred by the petitioner and the nature of service charges rendered by CCI Inc. to the petitioner :-

> "(i) CCI Inc. has been rendering services not only to the appellant company but also to other group companies and entities in India in so far A.Ys.1997-98 and 1998-99 are concerned.

(ii) CCI Inc. is looking after the India operation of TCCC and "India" in the scheme of things of TCCC includes Maldives.

(iii) The very genesis of the CCI Inc. evidenced from the papers submitted to RBI was to provide technical and managerial assistance to the appellant company as well as to take care of the brand image of TCCC in India.

(iv) The services rendered by CCI Inc. to the bottlers licensed by TCCC could be classified into services which are for the purposes of the appellant company and the services which are for the purposes of the business of the bottlers/TCCC. While the services to the bottlers for purchase of concentrate etc. and activities relating to market research etc. could be classified as services for the purposes of the business of the company as it directly helps the appellant in planning it's production as evidenced by minutes of S&OP (Sales and Operation Meetings) submitted before me and also in manufacture resource planning styled as MRP-II Project by the appellant, the services rendered in qualify upgradation of the bottlers etc. are for the purpose of the bottlers as well TCCC brand-image. This aspect gets further provided by the recent episode of toxic residue in the soft drinks wherein the bottling companies were directly involved and therefore the cases have been filed before different Courts by the bottling unit M/s.Hindustan Coca Cola Beverages Ltd. and not by the appellant. Merely because the bottlers are customers of the appellant, running their business or getting involved in their qualify of product is not for the purpose of business of the appellant company but for purpose of the business of TCCC or the bottler. CCI Inc.

provided such services to bottlers and rightly so as per the correspondence and approval from RBI, but these services do not have direct nexus with the business operations of the appellant. The decision of Hon. Supreme Court in the case of Travancore Titanium Vs. CIT (Ker), 60 ITR 277 and Indian Aluminium Company Ltd. V.s. CIT, 84 ITR 735 provide relevant legal authority in this regard in the facts and circumstances of the nature of services rendered by CCI Inc. to the appellant and other entities in India.

(v) There are expenses embedded in the service charges claimed by the appellant and embedded in the reimbursed cost of the appellant to CCI Inc. which are not allowable in nature as per Income tax law. These include foreign travel expenses of vices of employees for their pleasure trips, capital expenditure on purchase of soft ware etc.

(vi) There are expenses on various services directly provided to the appellant for supply of bases and concentrates of the beverages and various other aspects which have been discussed in detail in the appellate order for A.Y.1998-99."

Accordingly, the CIT (A) held that since the services rendered by CCI Inc benefited not only the petitioner but also benefited other group companies, disallowance has to be made to that extent and since the disallowance made by the AO was less than 25% of the total service charges claimed, the CIT (A) upheld the disallowance made by the AO.

9. As regards the disallowance of the

marketing expenses of Rs.17,99,74,343/- made by the AO, the CIT (A) partially allowed the appeal and held that the disallowance shall be restricted to Rs.10,00,000/- computed as below :-

(i) Difference }		
(ii) No reply }	31,19,919	
(iii)Earlier years	9,11,61,718	
		4,42,81,637
(iv) Ad hoc as in the asstt.order		2,00,00,000
(v) Capital expenditure on films/ TV and brand building (bal.fig)		3,37,18,863
		10,00,00,000

10. Being aggrieved by the aforesaid order passed by CIT (A), the petitioner filed an appeal before the Tribunal. No appeal was filed by the revenue in respect of the service charges allowed by the A.O. and confirmed by C.I.T. (A). In the appeal, the petitioner specifically raised the following legal issues relating to disallowance of service charges :-

(i) Whether there was anything on record to show that CCI Inc was rendering services to 'group concerns' especially when the Petitioner had clearly stated that there were no group concerns in India in the assessment year 1997-98 ?

(ii) Whether taking care of the brand image of TCCC in India was for the business purpose of the Petitioner in the light of the undisputed fact that (a) TCCC was the owner of the brands ; (b) the Petitioner was the licensee of the such brands on a gratuitous basis ; (c) the Petitioner's business prospects

depended directly on the said ‘brand image’ ?

(iii) Whether rendering services to the Petitioner’s bottlers was in the business interest of the Petitioner in the light of the undisputed fact that (a) the services were n the nature of quality control to ensure that there is no under-filling or over-filling of the bottles, (b) the Petitioner’s business interests were directly dependent on production by the bottlers ; (c) the Petitioner was recovering the full cost of such services from the bottlers in the form of increased sales price of concentrate ?

(iv) Whether expenses embedded in the service charges such as foreign travel expenses of wives etc are allowable as per income-tax law ?"

11. As regards the disallowance of the marketing expenses is concerned, it is pertinent to note that both the petitioner as well as the revenue had filed appeals against the order of CIT (A). According to the petitioner, the CIT (A) erred in making disallowance of marketing expenses amounting to Rs.10,00,00,000/-. According to the revenue the CIT (A) ought to have made disallowance of marketing expenses at Rs.13,03,94,446/- as computed below :-

(i) Difference	94,35,775
(ii) No reply	95,64,184
(iii)Earlier years	5,76,75,624

	7,66,75,583
(iv) Ad hoc as in the asstt.order	2,00,00,000
(v) Capital expenditure on films/ TV and brand building (bal.fig)	3,37,18,863
	13,03,94,446

12. Thus, the specific issues raised in the appeal filed by the petitioner as well as the revenue were, whether the CIT (A) was justified in making disallowance of marketing expenses and if so, whether :-

(a) The prior period expenditure ought to be Rs.4,11,61,718/- as determined by the CIT (A) or should it be Rs.5,76,75,624/- as calculated by the department (i.e. a difference of Rs.1,65,13,906/-) ;

(b) Whether disallowance of Rs.31,19,919/- made by the CIT (A) on account of 'differences / no reply' was justified when the payments were made by account-payee cheques and constituted a small fraction of the total expenditure of Rs.73,79,03,469 ?

(c) If so, whether disallowance on account of 'differences / no reply' made by CIT (A) at Rs.31,19,919 as determined by the is correct or should it be at Rs.1,89,99,955 (Rs.94,35,775 plus Rs.95,64,184) as calculated by the department (i.e. a difference of Rs.1,58,80,036) ;

(d) Whether there is any scope for ad-hocism in a quasi-judicial proceeding so as to justify the ad-hoc disallowance of Rs.2 crores ?

(e) Whether disallowance of expenditure on films/TC and brand buildings made

on the ground that the same are capital expenditure is justifiable ?

13. By the impugned order dated 5th October, 2005, the Tribunal, without considering the specific grounds raised in the appeal relating to disallowance of service charges and marketing expenses confirmed by the CIT (A), restored the matter to the AO for denovo consideration. The Tribunal held that whole of the expenses amounting to Rs.73,79,03,469/- claimed as marketing expenses and whole of the expenses of Rs.46,35,12,031/- claimed as service charges are to be segregated first yearwise and then the expenses pertaining or relating to the year in question are to be examined in detail to determine and ascertain whether all the expenses relating to the year under consideration has actually been paid out and expended wholly and exclusively for the purpose of business.

14. The petitioner, thereupon filed a miscellaneous application stating therein that the Tribunal ought not to have remanded the case to the file of AO for redetermination without deciding the issues specifically raised in the appeal. The Tribunal by its order dated 7th July, 2006 held that its decision to restore the matter to the AO was a conscious decision taken based on the totality of

the facts and circumstances of the case. The Tribunal further held that though the AO is required to consider as to whether the entire claim of service charges and marketing expenses were incurred in the assessment year in question, the quantification of inadmissible expenses which may ultimately be found to be not having been incurred for the purpose of assessee's business shall be restricted to Rs.10,80,04,482/- of the service charges and Rs.17,99,74,343/- of the marketing expenses. Challenging the aforesaid orders passed by the Tribunal, the present petition is filed.

15. Mr.Dastur, learned senior advocate appearing on behalf of the petitioner submitted that the Tribunal seriously erred in restoring the matter to the file of AO for denovo consideration of the entire claim of service charges and marketing expenses, instead of adjudicating upon the issues specifically raised in the appeal.

16. Relying upon the decisions in the case of Raja Vikramaditya Singh (decd.) V/s. Commissioner of Income-Tax [(1988) 169 ITR 55 (M.P.)], Saurashtra Packaging Private Limited V/s. Commissioner of Income-Tax [(1993) 204 ITR 443 (Guj)], Rajesh Babubhai Damania V/s. Commissioner of Income Tax

[(2001) 251 ITR 541 (Guj.)], Rameshchandra M. Luthra V/s. Assistant Commissioner of Income Tax [257 ITR 460 (Guj.), Omar Salay Mohamed Sait V/s. Commissioner of Income-Tax, Madras [(1959) 37 ITR 151 (S.C.)], Mr.Dastur submitted that if all the basic facts required for the disposal of an appeal are on record, then the Tribunal must decide the issues raised in the appeal instead of remanding the matter back to the lower authorities. In the present case the Tribunal has not even considered the specific issues raised in the appeal. Relying upon the decision of the Apex Court in the case of Commissioner of Income-Tax, Bombay North V/s. Chandulal Keshavlal & Co. [(1960) 38 ITR 601 (S.C.)], Mr.Dastur submitted that even if the payments made by the petitioner for its business enures some benefit to a third party, the petitioner is entitled to claim deduction of such expenses and in any event, without deciding that issue the Tribunal ought not to have remanded the case for denovo consideration.

17. Mr.Dastur further submitted that the impugned orders passed by the Tribunal has caused grave prejudice to the petitioner because relying upon the decision of the Tribunal dated 5th October, 2005, the AO has passed an assessment order on 31st

march, 2006 for AY 2003-04, disallowing 100% of the marketing expenditure and 100% of the service charges. Moreover, even in the present case in the light of the impugned orders passed by the Tribunal, the AO has called upon the petitioner to produce every voucher relating to the entire service charges amounting to Rs.46,35,12,031/- and marketing expenses amounting to Rs.73,79,03,469/- incurred by the petitioner during AY 1997-98. Mr.Dastur submitted that the scope of the enquiry in an appeal filed before the Tribunal is restricted to the specific issues raised in the appeal and it is not open to the Tribunal to pass an order which goes beyond the scope of the Appeal. Accordingly, Mr.Dastur submitted that the impugned orders passed by the Tribunal be quashed and set aside and the case be remitted to the Tribunal with a direction to dispose of the appeal on merits on the basis of the material on record.

18. Mr.Kotangale, learned counsel appearing on behalf of the revenue, on the other hand, submitted that in the present case, from the assessment order dated 31st March, 2000 it is clear that the petitioner had not given the basis or break-up of the working of the expenses claimed by them. In these circumstances, the Tribunal was

justified in remanding the matter to the AO for denovo consideration. Mr.Kotangale submitted that by the remand order no prejudice is caused to the petitioner, because, as per the order of the Tribunal dated 7/7/2006, the disallowance on remand is restricted to the disallowance made by the AO in the original assessment order and it would be open to the petitioner to establish before the AO that the amounts claimed by them have been actually spent wholly and exclusively for the purpose of business.

19. Relying upon a full bench judgment of this Court in the case of Ahmedabad Electricity Company Limited V/s. CIT [199 ITR 351], Mr.Kotangale submitted that the basic purpose of an appeal in an income tax matter is to ascertain the correct tax liability of the assessee and for that purpose the appellate Tribunal under Section 254 of the Income Tax Act has vide powers to consider the entire proceedings and pass such orders thereon as it thinks fit. In the present case, in the absence of any material facts or break up of the expenses given by the petitioner, the Tribunal was justified in remanding the matter to the AO for denovo consideration. While disposing of the miscellaneous application, the Tribunal has clarified that the disallowance on remand shall not exceed the

disallowance made in the original assessment. Accordingly, Mr.Kotangale submitted that no interference is called for in a writ jurisdiction and the petition is liable to be dismissed.

20. Having considered the rival submissions, we are of the opinion that in the facts of the present case, the arguments advanced on behalf of the petitioner deserves acceptance.

21. In the present case there were two issues before the Tribunal. One relating to the disallowance of service charges and another relating to disallowance of marketing expenses. The CIT (A) had upheld disallowance of service charges amounting to Rs.10,80,04,482/- out of the total claim of Rs.46,35,12,031/- inter alia on the ground that the services rendered benefited the group companies, services were rendered to take care of the brand image of TCCC in India, services were rendered to the bottlers and that the service charges included foreign travel expenses of wives which were not allowable. In the appeal the petitioner had specifically pleaded there were no group concerns in India in AY 1997-98 and, therefore, disallowance could not be made on that ground. It was pleaded that being a licensee of the brands owned by TCCC,

the petitioners business prospects depended directly on the brand image of TCCC, and therefore, disallowance could not be made on that ground. It was pleaded that rendering services to the bottlers was necessary so that the branded goods are bottled and marketed as per the standards prescribed and that the services rendered to the bottlers ultimately boosts the sale of the 'concentrates' and, therefore, the said expenses incurred for the business of the petitioner ought to have been allowed. It was pleaded that even the foreign travel expenses of the wives were incurred in the course of business and, therefore, allowable.

22. Similarly, in respect of disallowance of marketing expenses of Rs.10,00,000/- confirmed by the C.I.T. (A), the petitioner claims that before the Tribunal they were agreeable for confirmation of the disallowances made by CIT (A) i.e., prior period expenses at Rs.4,11,61,718/- and disallowance of Rs.31,19,317/- on account of 'differences / no reply'. Therefore, the issue to be decided by the Tribunal was whether the disallowance of prior period expenditure should have been Rs.5,76,75,624/- as claimed by the revenue [instead of disallowance of Rs.4,11,61,718/- confirmed by the CIT (A)] and whether the disallowance on account of differences /

no reply should have been Rs.1,89,99,955/- as claimed by the revenue [instead of disallowance of Rs.31,19,919/- confirmed by the CIT (A)]. The Tribunal was required to decide as to whether the said differences / no reply cases deserved to be allowed as the payments were made by account payee cheques and constituted a small fraction of the total expenditure of Rs.73,79,03,469/-. The Tribunal was required to decide whether the CIT (A) was justified in making the disallowance of marketing expenses amounting to Rs.2 crores on ad-hoc basis and whether disallowance of the expenditure incurred on production of short duration advertisement film etc. and brand building capital expenditure was in accordance with law.

23. However, in the impugned order dated 5th October, 2005, the Tribunal has not dealt with any of the above specific issues raised in the appeal and restored the issue to the file of the AO (see para 51) with a direction to the AO first to ascertain and determine the actual amount of service charges which pertain to the year in question and then to adjudicate the question of allowability thereof as per law. The Tribunal directed the petitioner to furnish necessary documents, details, particulars, information, books and other evidence

in support of their entire claim of service charges. Similarly, in respect of disallowance of marketing expenses, the Tribunal restored the matter to the file of AO by holding that the whole of the expenses claimed amounting to Rs.73,79,03,469/- are to be segregated first yearwise and then the expenses pertaining or relating to the year in question are to be examined in detail to determine and ascertain whether all the expenses related to the year under consideration has actually been paid out and expended wholly and exclusively for the assessee's business. Thus, the Tribunal on remand, directed the A.O. to investigate the entire claim of service charges and marketing expenses even though the appeal was restricted to the partial disallowance of service charges and partial disallowance of marketing expenses confirmed by C.I.T. (A). When this anomaly was brought to the notice of the Tribunal by filing a miscellaneous application, the Tribunal disposed of the said miscellaneous application by stating that it had taken a conscious decision and clarified that on remand, the AO shall restrict the disallowance to the amounts disallowed to the original assessment.

24. Section 254(1) of the Income Tax Act, 1961 requires the Tribunal to give both the parties

to the appeal an opportunity of being heard and pass such orders on the appeals filed before it as it thinks fit. The expression "pass such orders thereon as it thinks fit" in section 254(1) though wide enough to include the power of remand, such power can be exercised only if it is necessary to decide the issues which are subject matter of the appeal. In the present case, none of the issues specifically raised in the appeal have been considered by the Tribunal before remanding the matter to the file of A.O.

25. By the impugned order, the Tribunal has directed the AO to reconsider the entire claim of service charges and marketing expenses by first segregating the prior period expenses and thereafter determine the actual amount pertaining to the year under appeal and adjudicate as to whether the expenses incurred in the year in question have been incurred wholly and exclusively for the purpose of business. It is pertinent to note that in para 50 of its order, the Tribunal has given a categorical finding to the effect that out of the disallowance of service charges of Rs.10,80,04,482/- confirmed by CIT (A), service charges amounting to Rs.3,37,06,617/- were incurred in the earlier year and that amount is not allowable in the year in

question. Having quantified the claims which relate to earlier years, the Tribunal was not justified in remanding the matter to AO to redetermine the service charges which are relatable to earlier years.

26. Similarly, whether service charges and marketing expenses were incurred wholly and exclusively for the purposes of business was not an issue raised in the appeal. The specific grounds raised in the appeal against the order of CIT (A) were, whether the services rendered benefited group companies, whether the expenses were incurred to take care of TCCC brand image, whether rendering service to the bottlers could be a ground for making disallowance, whether disallowance of foreign travel expenses of the wives was justified, whether disallowance of marketing expenses ought to have been enhanced as claimed by the revenue, whether disallowance could be made on adhoc basis and whether expenditure on films / T.V. and brand buildings were capital expenditure. The Tribunal ought to have adjudicated upon these issues and to decide any of these specific issues if it was found necessary, the Tribunal could have remanded the matter for reconsideration of those issues. As the Tribunal has not considered the specific issues

raised in the appeal, it is difficult to sustain the remand order passed by the Tribunal.

27. Strong reliance was placed by Mr.Kotangale, learned counsel appearing on behalf of the revenue on the Full Bench decision of this High Court in the case of Ahmedabad Electricity Company Limited (supra). In our opinion, that decision has no bearing on the facts of the present case because in that case what is held is that the appellate Tribunal has jurisdiction to permit additional grounds to be raised before it even though the same may not arise from the order of the appellate Assistant Commissioner so long as the said grounds are in respect of the subject matter of the entire tax proceedings. In the present case, even the revenue has not filed any appeal or cross-objection in respect of service charges and marketing expenses allowed by the AO and confirmed by CIT (A). In these circumstances, the order passed by the Tribunal without considering the issues raised in the appeal and in remanding the case to the file of AO for reconsideration of the entire claim relating to service charges and marketing expenses cannot be sustained.

28. For all the aforesaid reasons, we set

aside the impugned order passed by the Tribunal dated 5th October, 2005 as well as the order passed on an miscellaneous application dated 7th July, 2006 insofar as it pertains to the claim relating to service charges and marketing expenses and remit the case to the Tribunal for disposal of the appeal in accordance with law.

29. Accordingly, the writ petition succeeds. Rule is made absolute in terms of prayer clause (a) with no order as to costs.

(DR.S. RADHAKRISHNAN, J.)

(J.P. DEVADHAR, J.)